

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-207355

DATE: October 7, 1982

MATTER OF: Mr. Charles E. Clark

DIGEST: Travel advance outstanding and not liquidated at time of former employee's retirement is not an overpayment of pay or allowances and therefore, may not be considered for waiver under the authority of 5 U.S.C. 5584. Under 5 U.S.C. 5705 and given the Government's right as a creditor to use monies due the individual to reduce or extinguish a debt due the Government, expenses due former employee for invitational travel performed subsequent to retirement are subject to setoff against indebtedness for unliquidated travel advance.

This action is in response to a request for decision from an authorized certifying officer, Equal Employment Opportunity Commission, concerning the Commission's authority to set off a claim for travel expenses incurred by a former employee subsequent to his retirement, against an indebtedness arising out of a travel advance to him prior to his retirement. In addition, we are asked whether recovery of the unliquidated travel advance be waived.

For the reasons stated below, the indebtedness may not be waived and may be collected by setoff.

At the Commission's request Mr. Charles E. Clark, a former Regional Director with the Commission, performed invitational travel in 1981 to appear as a witness on behalf of the Commission at a Federal District Court trial. As a result of that travel, he incurred expenses for which he sought reimbursement. It is reported that the Commission's financial branch approved reimbursement in the amount of \$285.35. However, during processing of his travel voucher it was discovered that he had an outstanding debt to the United States in the amount of \$707.53, which represented the unliquidated portion of a

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travel advance made to him while he was an employee, but which apparently had not been collected at the time of his retirement in 1979.

The Commission applied the \$285.35 amount due him under the invitational travel orders to his indebtedness of \$707.53 and initiated collection action for the remainder. Mr. Clark, in turn, has reasserted his entitlement to be paid for his current travel expenses and requests that his outstanding debt of \$707.53 be waived.

We presume that Mr. Clark's request for waiver of his pre-retirement indebtedness is predicated upon the authority of 5 U.S.C. 5584 for waiver of overpayments of pay and allowances. This provision would not be for application in his case.

Section 5705 of title 5, United States Code, which authorizes advances of money for Government travel provides in part:

"* * * A sum advanced and not used for allowable travel expenses is recoverable from the employee or his estate by--* * *

"(1) setoff against accrued pay, retirement credit, or other amount due the employee;

"(2) deduction from an amount due from the United States; and

"(3) such other method as is provided by law."

We have held that advances of money for official travel under the authority of 5 U.S.C. 5705 are neither pay nor allowances. Monies so advanced are

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considered as a loan to the employee for his personal benefit, to enable him to perform official travel, 54 Comp. Gen. 190 (1974). In view of the fact that the authority to waive an indebtedness under 5 U.S.C. 5584 is limited to "an erroneous payment of pay or allowances," Mr. Clark's indebtedness may not be waived.

In addition to its specific right to set off unliquidated travel advances under the above-quoted authority of 5 U.S.C. 5705, the Government has the common law right which belongs to every creditor to use monies in his hands which are due the debtor, to extinguish the debts of the debtor. 58 Comp. Gen. 501 (1979). In addition the Government has the right to administratively set off a former employee's indebtedness against his civil service retirement annuity under the procedures set forth in Federal Personnel Manual Supplement 831-1, Subchapter S19. See 58 Comp. Gen. 501, 502 (1979).

Accordingly, the amount of Mr. Clark's approved reimbursement for invitational travel is to be used to reduce his indebtedness to the Commission. If he is unwilling to directly reimburse the Commission for the remainder of the debt, recovery from his retirement annuity should be pursued.

F. H. Barclay, Jr.
for
Comptroller General
of the United States